

Chapter 29

Customs Brokers

1. Introduction:

1.1 Section 146 of the Customs Act, 1962 states that no person shall carry on business as an agent relating to entry or departure of a conveyance or the import or export of goods at any Customs station unless such person holds a licence granted in this behalf in accordance with regulations made in this regard by the Board. Thus, any person desirous to carry on business as a Customs Broker relating to entry or departure of a conveyance or import or export of goods at any Customs station is required to obtain a licence, which is referred to as the Customs Broker licence and the person concerned as the Customs Broker.

1.2 Section 146 of the Customs Act, 1962 read with the Customs Brokers Licensing Regulations (CBLR), 2013 governs the legal and procedural aspects of the grant of Customs Broker licence as well as the obligations and responsibilities of a Customs Broker.

2. Application for Customs Broker licence and eligibility:

2.1 Regulation 4 of CBLR 2013 provides for invitation of applications by Directorate General of Inspection of Customs and Central Excise (DGICCE) in the month of April every year for conducting examination and subsequent grant of license to act as Customs Broker in prescribed Form A of CBLR by publication in two leading national daily newspaper in Hindi and English. The application in Form A shall be made to Commissioner of Customs having jurisdiction over the area where the applicant wants to transact business.

2.2 The eligibility condition as per Regulation 5 of CBLR 2013 is that an applicant should be a citizen, a person of sound mind, is not adjudicated as insolvent and confirms financial viability by a certificate issued by a scheduled bank or such other proof acceptable to Commissioner of Customs evidencing possession of assets of value of not less than Rs.5 lakhs. Further an individual applicant or in the case applicant is a firm or company its partner or director or an authorized employee shall be a graduate from a recognized university and possess a professional degree such as Masters or equivalent degree in Accounting, Finance or Management, CA./ MBA/LLB or Diploma in Customs Clearance work from any institute or university recognized by the Government or is having at least two years experience in transacting Customs Broker as G card Holder. The applicant may also be a retired Group A officer from the Indian Customs and Central Excise Services having a minimum of 5 years experience in Group A service. Other conditions that need to be fulfilled by the applicant are:

- (i) The applicant has neither been convicted by a competent Court for an offence nor any criminal proceeding is pending against him in any Court of law;
- (ii) The applicant has not been penalized for any offence under the Act, the Central Excise Act and the Finance Act, 1994.

3. Qualifying examinations:

3.1 Any applicant who satisfies the criteria of Regulations 5 of CBLR 2013 and has applied for grant of licence under Regulation 4 shall be required to appear for the written as well

as the oral examination conducted by the Directorate General of Inspection of Customs & Central Excise(DGICCE).

- 3.2 The written examination shall be conducted on specified dates in month of January of each year for which intimation shall be sent individually to applicants in advance before the date of examination. The result of the said examination shall be declared by end May each year. The successful applicant shall be called for an oral examination on specified dates in month of June of each year, the result of which shall be declared in the month of July of each year.
- 3.3. The applicant who fails to clear the oral examination within 2 years from the date of declaration of result of the related written examination, shall be treated as having failed the examination. Further an applicant shall be allowed a maximum period of 7 years from the date of original application within which he shall pass both written and oral examination and no further extension shall be granted.
- 3.4 The examination may include questions on the following:
- (a) preparation of various kinds of Bills of Entry, Shipping Bill and other clearance documents;
 - (b) arrival entry and clearance of vessels;
 - (c) tariff classification and rates of duty;
 - (d) determination of value of imported and export goods;
 - (e) Conversion of currency;
 - (f) Nature and description of documents to be filed with various kinds of Bills of Entry, Shipping Bills and other clearance documents;
 - (g) Procedure for assessment and payment of duty including refund of duty paid;
 - (h) examination goods at Customs Stations;
 - (i) prohibitions on import and export;
 - (j) bonding procedure and clearance from bond;
 - (k) re-importation and conditions for free re-entry;
 - (l) Drawback and export promotion schemes including SEZ scheme;
 - (m) offences under the Act;
 - (n) provisions of the allied Acts including the Indian Explosives Act 1884, Destructive Insects and Pests Act 1914, Dangerous Drugs Act 1930, Drugs and Cosmetics Act 1940, Central Excise Act 1944, Copy Right Act 1957, Trade and Merchandise Marks Act 1958, Arms Act 1959, Patents Act 1970, Narcotics Drugs and Psychotropic Substances Act 1985, Foreign Trade (Development and Regulations) Act, 1992, Foreign Exchange Management Act 1999, Design Act, 2000 and Food Safety and Standard Act, 2006 in so far as they are relevant to Customs clearance of goods;
 - (o) provisions of the Prevention of Corruption Act, 1988;

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- (p) procedure for appeal and revision applications under the Act; and
- (q) on-line filing of electronic Shipping Bills or Bills of Entry via ICEGATE/ICES.

4. Bond for grant of licence:

- 4.1 The Commissioner of Customs shall on payment of Rs.5,000/- grant license to an applicant who has passed the oral examination within two months of date of declaration of the result. Such licensed Customs Broker may work in all Customs stations subject to intimation in Form C to the Commissioner of Customs station where he intends to transact business.
- 4.2 Before granting the licence under the Regulation 7 of CBLR 2013, the Commissioner of Customs shall require the applicant to enter into a bond prescribed in this regard for due observance of these regulations and shall also require to furnish a bank guarantee, postal security or National Saving Certificate in the name of Commissioner of Customs for an amount of Rs.5 lakhs for carrying out the business as a Customs Broker.

5. Validity of licence:

- 5.1 The licence granted under Regulation 7 shall be valid for a period of 10 years from the date of issue and shall be renewed from time to time if the performance of the licensee is found to be satisfactory with reference, *inter alia*, to the obligation specified for Customs in CBLR 2013 including absence of instance of any complaints of misconduct. The license can be renewed for a further period of 10 years by Commissioner of Customs, However, a licence granted to a Customs Broker, authorised under the Authorised Economic Operator Programme vide Circular No. 28/2012-Cus., dated 16-11-2012, shall not require renewal till such time the said authorisation is valid.

6. Obligations of Customs Broker:

- 6.1 Regulation 11 of the CBLR 2013 casts certain obligations on a Customs Broker. Some of the important obligations enjoin the Customs Broker are to :
 - (a) obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as Customs Broker and produce such authorisation whenever required by the Assistant/Deputy Commissioner of Customs;
 - (b) transact business in the Customs Station either personally or through an employee duly approved by the Assistant/Deputy Commissioner of Customs;
 - (c) not represent a client in any manner to which the Customs Broker, as a former employee of the Central Board of Excise and Customs gave personal consideration, or as to the facts of which he gained knowledge, while in Government service;
 - (d) advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Assistant/Deputy Commissioner of Customs;
 - (e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;
 - (f) not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Commissioner of Customs, from a client who is entitled to such information;

- (g) promptly pay over to the Government, when due, sums received for payment of any duty, tax or other debt or obligations owing to the Government and promptly account to his client for funds received for him from the Government or received from him in excess of Governmental or other charges payable in respect of the clearance of cargo or baggage on behalf of the client;
- (h) not procure or attempt to procure directly or indirectly, information from the Government records or other Government sources of any kind to which access is not granted by the proper officer;
- (i) not attempt to influence the conduct of any official of the Customs Station in any matter pending before such official or his subordinates by the use of threat, false accusation, duress or the offer of any special inducement or promise of advantage or by the bestowing of any gift or favour or other thing of value;
- (j) not refuse access to, conceal, remove or destroy the whole or any part of any book, paper or other record, relating to his transactions as a Customs Broker which is sought or may be sought by Commissioner of Customs;
- (k) maintain up to date record such as bill of entry , shipping bill , transshipment application and all correspondences and other papers relating to his business as Customs Broker and also accounts including financial transactions in an orderly and itemized manner as specified by Deputy / Assistant Commissioner of Customs and keep them current;
- (l) immediately report the loss of license to the Commissioner of Customs;
- (m) discharge duty as a Customs Broker with utmost speed and efficiency;
- (n) Verify antecedents, correctness of IEC code number, identity of his client and functioning of the client at the declared address by using reliable, independent, authentic documents, data and information; and
- (o) Inform any change of postal address, telephone number, e- mail etc. to the Deputy Commissioner / Assistant Commissioner of Customs within 1 month of such change.

7. Suspension, revocation of licence or imposition of penalty:

7.1 The Commissioner of Customs may revoke the licence of a Customs Broker and order for forfeiture of part or whole of security, or impose penalty not exceeding Rs.50,000 on him on any of the following grounds:

- (a) failure of to comply with any of the conditions of the bond executed by him;
- (b) failure to comply with any of the provisions of the regulations;
- (c) committing any misconduct, which in the opinion of the Commissioner renders him unfit to transact any business in the Customs Station;
- (d) adjudicated as an insolvent;
- (e) becomes of unsound mind; and
- (f) has been convicted by a Court for an offence involving moral turpitude.

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- 7.2 The Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the licence of a Customs Broker where an enquiry against such agent is pending or contemplated. In such case, the Commissioner of Customs shall, within 15 days from the date of such suspension, give an opportunity of hearing to the Customs Broker concerned and then pass an order either revoking the suspension or continuing it, within 15 days from the date of hearing.
- 7.3 The Commissioner of Customs shall issue a written notice to the Customs Broker within 90 days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the licence or impose penalty and require the said Customs Broker to submit within 30 days to a nominated Deputy / Assistant Commissioner of Customs a written defense and also to specify whether the Customs Broker desires a personal hearing by the said Deputy / Assistant Commissioner of Customs. Thereafter, the Commissioner of Customs may direct the Deputy / Assistant Commissioner of Customs to inquire into the grounds which are not admitted by the Customs Broker. At the conclusion of the inquiry, the Deputy / Assistant Commissioner of Customs shall submit the enquiry report within 90 days from the date of issue of the notice.
- 7.4 The Commissioner of Customs shall furnish to the Customs Broker a copy of the enquiry report require him to submit any representation within 30 days. After considering the enquiry report and the representation, if any, the Commissioner of Customs shall pass orders either revoking the suspension of the license or revoking the licence of the Customs Broker or imposing penalty within 90 days from the date of submission of the enquiry report. Order for revoking the license shall not be passed unless an opportunity is given to the Customs Broker to be heard in person by the Commissioner of Customs. An appeal against the order would lie to the Customs, Central Excise and Service Tax Appellate Tribunal.
- 7.5 Imposition of penalty or any action taken under the CBR 2013 is without prejudice to the action that may be taken against the Customs Broker or his employee under the provisions of the Customs Act, 1962 or any other law for the time being in force.

[Refer Notification No. 65/2013-Cus(N.T.), dated 21-6-2013]
